IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4031 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SONGADH MUNICIPAL BOROUGH

Versus

RAVINDRA RAMDAS PATIL

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Appearance:

1. Special Civil Application No. 4031 of 2001

MR AK CLERK for Petitioner No. 1

MR NR SHAHANI for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/11/2003

ORAL JUDGEMENT

#. Rule. Mr.Shahani, learned advocate appearing for the respondent workman waives service of rule.

#. With the consent of the learned advocates, the matter is taken up for final hearing today.

#. The present petition is filed by Songadh Municipal Borough through its Chief Officer challenging the judgment and award passed by the learned Judge of the Labour Court, Surat in Reference (LCS) 262 of 1993 dated 26.2.1996 and also the judgment and order passed by the learned Judge of the Labour Court in Restoration Application No.91 of 1996 in Original Reference No.262 of 1993 dated 25.7.1997.

#. The facts of the case are that the respondent workman had filed the Reference before the Labour Court challenging his termination dated 8.1.1993. The said Reference culminated into an award dated 26.2.1996 in absence of any written statement or contest on behalf of the present petitioner, which was earlier Songadh Nagar Panchayat. Indifferent approach of the officers of the public body is well known of which a judicial notice can be taken. But, in this case misfortune of the petitioner aggravated due to serious illness of the wife of the advocate engaged by the then Songadh Nagar Panchayat on account of which the advocate could not remain present before the Labour Court. The award dated 26.2.1996 came to the notice of the petitioner only in the month of June 1996 and thereafter a restoration application was filed before the learned Judge of the Labour Court setting out the reasons for absence of the learned advocate for the petitioner before the learned Judge.

#. Restoration Application was contested by the respondent workman pointing out that the absence of the petitioner was not for a day or two, but, it persisted right from the date of filing of the Reference till its disposal, i.e. 17.2.1994 to 26.2.1996. It was also contended by the respondent workman that no written statement was filed to the statement of claim. The respondent workman reiterated his claim by filing an affidavit, after that notice was issued to the petitioner institution by Registered A.D. on 18.9.1995 which was served to the institution and A.D. slip had returned on 29.9.1995. Learned Judge taking into consideration consistent absence of the petitioner institution deemed it fit to reject the restoration application by judgment and order dated 25.7.1997.

#. Being aggrieved by the same, the petitioner institution has approached this Court. Mr.A.K.Clerk, learned advocate appearing for the petitioner institution, submitted that it is not unknown that the public bodies have manifold difficulties in either enforcing or defending their rightful claims because for that they have to act through `human agency' namely their

employees, who are known for their indifferent approach, and who do not take sufficient care of the matters. Added to that, a public body, after engaging an advocate, has to rely upon the learned advocate like any other private litigant. He submitted that, in the present case also the petitioner institution had engaged an advocate, who did not remain present before the Court, of course for the reasons set out in restoration application, particularly on the date of last hearing, i.e. 26.2.1996 when the matter came to be disposed of. The learned advocate relied upon a judgment of the Honourable Apex Court in the matter of Rafiq and another Vs. Munshilal and another, reported in AIR 1981 SC 1400 wherein the Honourable Apex Court was pleased to set aside the orders of dismissal passed by the High Court disposing of the appeal in absence of the counsel on ground that a party who, as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain supremely confident that his lawyer will look after his interest and such a innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate, omission or misdemeanour of his counsel. Mr.Shahani, learned advocate appearing for the respondent workman, submitted that the said judgment of the Honourable Apex Court is not applicable to the facts of the present case, because, in the matter before the Honourable the Supreme Court it was the case of absence of the learned advocate of the party before the High Court only for a particular day, as in the present case, there is consistent absence of the learned advocate and of the party for a long period of three years.

#. Taking into consideration the rival submissions of the parties and keeping in mind the fact that the petitioner is a public body, who if asked to comply with the judgment and award of the Labour Court, it will be a burden on public exchequer and that too when the public body did not have an opportunity to contest the claim of the respondent workman on merits. Therefore, this Court is of the opinion that interest of justice will be served if the respondent workman is compensated by awarding a reasonable amount towards the cost, which he has incurred for obtaining an award. On payment of such cost, the public body is to be given an opportunity to contest the claim of the respondent workman, which if found genuine by the Court after the same is contested by the public body, can always result into an award again.

#. The petitioner Songadh Municipal Borough is directed to pay a sum of Rs.15000/- by way of cost to the

respondent workman within six weeks from today. On condition of the aforesaid payment, the judgment and award in Reference (LCS) No.262 of 1993 and the judgment and order in Restoration Application No.91 of 1996 are quashed and set aside. The matter is sent back to the Labour Court, Surat with a direction that the Court shall give top priority to the matter and shall decide the same within a period of six months from the date of the receipt of this order. Rule is made absolute to the aforesaid extent.

(Ravi R.Tripathi,J)

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